

Short Title: Revised Uniform Athlete Agents Act.

A BILL TO BE ENTITLED

AN ACT TO ENACT THE REVISED THE UNIFORM ATHLETE AGENTS ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9 of Chapter 78C of the General Statutes is repealed.

SECTION 2. Chapter 78C of the General Statutes is amended by adding a new Article to read:

"ARTICLE 10.

"REVISED UNIFORM ATHLETE AGENTS ACT.

§ 78C-111. Short title.

This Article may be cited as the Revised Uniform Athlete Agents ~~Act (2015).~~ Act.

§ 78C-112. Definitions.¹

~~In this {act}:~~ The following definitions apply in this Article:

- (1) Agency contract. – An agreement in which a student athlete authorizes a person to negotiate or solicit on behalf of the athlete a professional-sports-services contract or endorsement contract.

Staff Note: Subdivision (1) is comparable to G.S. 78C-86(1).

- (2) ~~"Athlete-agent":~~ Athlete agent. –

- a. ~~means an~~ An individual, whether or not registered under this Article, ~~who:~~ who does any of the following:

1. Directly or indirectly recruits or solicits a student athlete to

¹ Staff Note: The designators "a.," "1.," and "I." are substituted for the uniform act's designators "(A)," "(i)," and "(I)" in this section and throughout the draft to conform to the numbering system used in the General Statutes. Other style changes include capitalizing the first word in a tabular list, capitalizing "state" when referring to North Carolina, and adding "of this section" after subsection and subdivision references.

1 enter into an agency contract or, for compensation,
2 procures employment or offers, promises, attempts, or
3 negotiates to obtain employment for a student athlete as a
4 professional athlete or member of a professional sports
5 team or organization; organization.

- 6 2. For compensation or in anticipation of compensation
7 related to a student athlete's participation in athletics:
8 athletics, does any of the following:

9 I. Serves the athlete in an advisory capacity on a
10 matter related to finances, business pursuits, or
11 career management decisions, unless the individual
12 is an employee of an educational institution acting
13 exclusively as an employee of the institution for the
14 benefit of the institution; or institution.

15 II. Manages the business affairs of the athlete by
16 providing assistance with bills, payments, contracts,
17 or taxes; or taxes.

- 18 3. In anticipation of representing a student athlete for a
19 purpose related to the athlete's participation in athletics:
20 athletics, does any of the following:

21 I. Gives consideration to the student athlete or another
22 person; person.

23 II. Serves the athlete in an advisory capacity on a

1 matter related to finances, business pursuits, or
2 career management ~~decisions;~~ or decisions.

3 III. Manages the business affairs of the athlete by
4 providing assistance with bills, payments, contracts,
5 or ~~taxes;~~ but taxes.

6 **Staff Note:** Sub-subdivision (2)a. continues to include in the definition of "athlete agent" an
7 individual who, as described in sub-sub-subdivision (2)a.1., directly or indirectly recruits or
8 solicits a student athlete to enter into an agency contract but expands the definition to include an
9 individual who for compensation, procures employment or offers, promises, attempts, or
10 negotiates to obtain employment for a student athlete as a professional athlete or member of a
11 professional sports team or organization. Also, sub-subdivision (2)a. expands the definition of
12 "athlete agent" to include the individuals described in sub-sub-subdivisions (2)a.2. and (2)a.3.

13
14 b. ~~Does The term "athlete agent" does~~ not include an individual ~~who:~~
15 who does any of the following:

16 1. Acts solely on behalf of a professional sports team or
17 ~~organization;~~ or organization.

18 2. Is a licensed, registered, or certified professional and offers
19 or provides services to a student athlete customarily
20 provided by members of the profession, unless the
21 ~~individual:~~ individual does any of the following:

22 I. Also recruits or solicits the athlete to enter into an
23 agency ~~contract;~~ contract.

24 II. Also, for compensation, procures employment or
25 offers, promises, attempts, or negotiates to obtain
26 employment for the athlete as a professional athlete
27 or member of a professional sports team or

organization; or organization.

III. Receives consideration for providing the services
calculated using a different method than for an
individual who is not a student athlete.

Staff Note: Sub-subdivision (2)b. continues to exclude from the definition of "athlete agent" an individual who acts solely on behalf of a professional sports team or organization but eliminates the exclusion for an individual who is a spouse, parent, sibling, or guardian of the student athlete. However, sub-subdivision (2)b. adds an exclusion for the individual described in sub-subdivision (2)b.2., i.e., a "licensed, registered, or certified professional" as defined in subdivision (11) of this section.

(3) Athletic director. – The individual responsible for administering the overall athletic program of an educational institution or, if an educational institution has separately administered athletic programs for male students and female students, the athletic program for males or the athletic program for females, as appropriate.

Staff Note: Subdivision (3) is comparable to G.S. 78C-86(3).

~~[(4) Commission.—The Commission on Interstate Registration of Athlete Agents.]~~

~~[(5) Compact.—The Interstate Compact for Registration of Athlete Agents.]~~

Staff Note: Bracketed subdivisions (4) and (5) are necessary only if a state adopts Alternative B, creating a central registration agency to be known as the Commission on Interstate Registration of Athlete Agents.

~~At its June 3, 2016, meeting, the General Statutes Commission decided not to recommend the interstate compact registration option.~~

(6) Educational institution. – Includes a public or private elementary school, secondary school, technical or vocational school, community college, college, and university.

Staff Note: Subdivision (6) is new. It is added to make clear that the Article is intended to apply to all educational institutions, whether public or private, and all levels of education.

(7) Endorsement contract. – An agreement under which ~~a student an~~ athlete is employed or receives consideration to use on behalf of the other party any value that the athlete may have because of publicity, reputation, following, or fame obtained because of athletic ability or performance.

Staff Note: Subdivision (7) is comparable to G.S. 78C-86(5). The term "endorsement contract" is used only in subdivision (1), which defines "agency contract."

At its May 6, 2016, meeting, the General Statutes Commission changed "a student athlete" to "an athlete" at the suggestion of Paul Pogge, Associate Athletic Director, University of North Carolina at Chapel Hill. Mr. Pogge pointed out that a student athlete technically cannot have an endorsement contract.

(8) Enrolled. – Registered for courses and attending athletic practice or class.
"Enrolls" has a corresponding meaning.

Staff Note: Subdivision (8) is new.

(9) Intercollegiate sport. – A sport played at the collegiate level for which eligibility requirements for participation by a student athlete are established by a national association that promotes or regulates collegiate athletics.

Staff Note: Subdivision (9) is comparable to G.S. 78C-86(6).

(10) Interscholastic sport. – A sport played between educational institutions that are not community colleges, colleges, or universities.

Staff Note: Subdivision (10) is new. The term "interscholastic sport" is used in the definition of "student athlete" in subdivision (19) of this section and in § 78C-126(a)(1).

(11) Licensed, registered, or certified professional. – An individual licensed, registered, or certified as an attorney, dealer in securities, financial

planner, insurance agent, real estate broker or sales agent, tax consultant,
accountant, or member of a profession, other than that of athlete agent,
who is licensed, registered, or certified by the state or a nationally
recognized organization that licenses, registers, or certifies members of the
profession on the basis of experience, education, or testing.

Staff Note: Subdivision (11) is new. The term "licensed, registered, or certified professional" is
used in the definition of "athlete agent" in subdivision (2) of this section.

(12) Person. – An individual, estate, business or nonprofit entity, public
corporation, government or governmental subdivision, agency, ~~or~~
~~instrumentality, or other legal entity.~~ instrumentality, business trust,
partnership, limited liability company, association, joint venture, or any
other legal or commercial entity.

Staff Note: Subdivision (12) is modified to be consistent with the definition of "person" used in
recent uniform acts considered by the General Statutes Commission. Also, subdivision (12) is
different from the definition of "person" in G.S. 78C-86(7).

(13) Professional-sports-services contract. – An agreement under which an
individual is employed as a professional athlete or agrees to render
services as a player on a professional sports team or with a professional
sports organization.

Staff Note: Subdivision (13) is comparable to G.S. 78C-86(8).

(14) Record. – Information that is inscribed on a tangible medium or that is
stored in an electronic or other medium and is retrievable in perceivable
form.

Staff Note: Subdivision (14) is comparable to G.S. 78C-86(9).

(15) Recruit or solicit. – Attempt to influence the choice of an athlete agent by

1 a student athlete or, if the athlete is a minor, a parent or guardian of the
2 athlete. The term does not include giving advice on the selection of a
3 particular agent in a ~~family, coaching, or social~~ family or coaching
4 situation unless the individual giving the advice does so because of the
5 receipt or anticipated receipt of an economic benefit, directly or indirectly,
6 from the agent.

7 **Staff Note:** Subdivision (15) is new. "Recruit or solicit" is used in the definition of "athlete
8 agent" in subdivision (2) of this section and in G.S. 78C-86(2). The definition of "recruit or
9 solicit" excludes giving advice on the selection of a particular athlete agent in a family,
10 coaching, or social situation unless the advice is given because of the receipt or anticipated
11 receipt of compensation from the agent. However, G.S. 78C-86(2) expressly excludes from the
12 definition of "athlete agent" a spouse, parent, sibling, or guardian of a student athlete or an
13 individual acting solely on behalf of a professional sports team or professional sports
14 organization.

15
16 At its May 6, 2016, meeting, the General Statutes Commission changed "family, coaching, or
17 social situation" to "family or coaching situation."
18

19 (16) Registration. – Registration as an athlete agent under this Article.

20 **Staff Note:** The definition of "registration" in subdivision (16) differs from the definition of
21 "registration" in G.S. 78C-86(10) in order to accommodate the alternative registration
22 approaches.
23

24 (17) ~~"Sign" means, with~~ Sign. – With present intent to authenticate or adopt a
25 ~~record;~~ record, to do any of the following:

- 26 a. ~~to execute~~ Execute or adopt a tangible ~~symbol; or~~ symbol.
27 b. ~~to attach~~ Attach to or logically associate with the record an
28 electronic symbol, sound, or process.

29 **Staff Note:** Subdivision (17) is new.
30

31 (18) State. – A state of the United States, the District of Columbia, Puerto Rico,
32 the United States Virgin Islands, or any territory or insular possession

subject to the jurisdiction of the United States.

Staff Note: Subdivision (18) is new.

(19) Student athlete. – An individual who is eligible to attend an educational institution and engages in, is eligible to engage in, or may be eligible in the future to engage in, any interscholastic or intercollegiate sport. The term does not include an individual permanently ineligible to participate in a particular interscholastic or intercollegiate sport for that sport.

Staff Note: Subdivision (19) is similar to G.S. 78C-86(11) but includes the reference to "interscholastic sport." The term is defined in subdivision (10) of the section to mean "a sport played between educational institutions that are not community colleges, colleges, or universities."

~~Uniform Law Commission Legislative Note: The definitions of "commission" and "compact" are bracketed to reflect alternatives for registration. See the Legislative Note for Alternative A preceding Section 5 [§ 78C-115].~~

"§ 78C-113. ~~[Secretary of State] [Commission]~~; authority; procedure.

Alternative A

(a) ~~The [administrative procedure act]~~ Chapter 150B of the General Statutes applies to this Article. The Secretary of State may adopt rules under ~~the [administrative procedure act]~~ Chapter 150B of the General Statutes to implement this Article.

Staff Note: This alternative subsection (a) reflects the state registration option and is consistent with G.S. 78C-105 which authorizes the Secretary of State to adopt rules in accordance with Chapter 150B of the General Statutes, the "Administrative Procedure Act."

~~At its June 3, 2016, meeting, the General Statutes Commission decided to recommend continuation of the state registration system.~~

Alternative B

~~(a) Except as otherwise provided in this Article, the Commission is an agency of the state in which the headquarters of the Commission is located and the law of that state, including~~

~~the law relating to administrative procedure, public records, and public meetings, applies to the Commission. The Commission may adopt rules under the [administrative procedure act] of the state in which its headquarters is located to implement this Article.~~

Staff Note: This alternative subsection (a) reflects the interstate compact registration option.

At its June 3, 2016, meeting, the General Statutes Commission decided not to recommend the interstate compact registration option.

End of Alternatives

(b) By acting as an athlete agent in this State, a nonresident individual appoints the [Secretary of State] [Commission] as the individual's agent for service of process in any civil action in this State related to the individual acting as an athlete agent in this State.

Staff Note: Other than the inclusion of bracketed language to accommodate the alternative registration options, subsection (b) is comparable to G.S. 78C-87(a).

(c) The [Secretary of State] [Commission] may issue a subpoena for material that is relevant to the administration of this Article.

Staff Note: Subsection (c) is comparable to G.S. 78C-87(b).

Uniform Law Commission Legislative Note: There are two alternatives for subsection (a) to reflect the registration option discussed in the Legislative Note for Alternative A preceding Section 5 [§ 78C-115].

If the administrative procedure act of a state does not give administrative agencies the power to issue a cease and desist order or otherwise prevent continued conduct in violation of the act, the state should consider specifically granting the power to the agency designated as the enforcement agency.

The Secretary of State has been designated as the administrator of existing acts regulating the activities of athlete agents more frequently than any other office. It is recognized, however, that the appropriate state office to administer this act may vary from state to state and, therefore, references to the Secretary of State are in brackets.

Subsection (c) is in brackets because it may not be required under the administrative procedure acts of some states.

"§ 78C-114. Athlete agent; registration required; void contract.

(a) Except as otherwise provided in subsection (b) of this section, an individual may not act as an athlete agent in this State without holding a certificate of registration under this Article.

Staff Note: Subsection (a) is similar to G.S. 78C-88(a) except that G.S. 78C-88(a) uses "[e]xcept as otherwise provided in this section" to take into account subsection (b)'s safe harbor for an unregistered individual with whom a student athlete initiates communications and subsection (c)'s specific exception from registration requirements for a North Carolina licensed and resident attorney acting as an athlete agent.

(b) Before being issued a certificate of registration under this Article, an individual may act as an athlete agent in this State for all purposes except signing an agency contract, ~~if~~ if all of the following occur:

(1) A student athlete or another person acting on behalf of the athlete initiates communication with the ~~individual; and~~ individual.

(2) Not later than seven days after an initial act that requires the individual to register as an athlete agent, the individual submits an application for registration as an athlete agent in this state.

Staff Note: Subsection (b) is comparable to G.S. 78C-88(b).

(c) An agency contract resulting from conduct in violation of this section is void, and the athlete agent shall return any consideration received under the contract.

Staff Note: Subsection (c) is comparable to G.S. 78C-88(d).

G.S. 78C-88(c) is a non-uniform provision that provides a specific exception from registration requirements for a "North Carolina licensed and resident attorney" acting as an athlete agent "if the attorney neither advertises directly for, nor solicits, any student-athlete by representing to any person that the attorney has special experience or qualifications with regard to representing student-athletes and represents no more than two student-athletes." In this draft, attorneys licensed by this State are covered by the definition of "licensed, registered, or certified professional" in § 78C-112(11) and the exclusion for "licensed, registered, or certified professional" in the definition of "athlete agent" in § 78C-112(2)b.

Alternative A for Sections 5 through 9 [§§ 78C-115 through 78C-119]

(Enacting State Registration System)

Uniform Law Commission Legislative Note: There are two alternatives for Sections 5 through 9 [§§ 78C-115 through 78C-119]. Alternative A establishes a registration system in the enacting state which requires the enacting state to register an individual who is registered in another state if the enacting state determines the law of the other state is substantially similar to or more restrictive than the law of the enacting state, the registration in the other state has not been revoked or suspended, and no action involving the agent's conduct as an agent is pending.

Alternative B creates a central registration agency, the Commission on Interstate Registration of Athlete Agents, and provides that states enacting Alternative B will be entering into an interstate compact with other states that enact it.

While the numbering of the sections in the two alternatives is different because Section 5 [§ 78C-115] of Alternative B creates the commission and the contents of Section 9 [§ 78C-119] are folded into Section 5 [§ 78C-115], the substantive requirements for the initial registration and the basis for denial of registration or the suspension, revocation, or failure to renew registration are identical in both alternatives. Thus, the effect of Alternative B in a state adopting the compact is to delegate the responsibility for the registration of athlete agents and the civil enforcement of the act to a central entity created by the compact. A state adopting Alternative B also will have to amend Section 2 [§ 78C-112] to include the definition of commission for the new central registration agency and the definition of "compact" for the interstate compact, select Alternative B for Section 3(a) [§ 78C-113(a)], add bracketed Section 18 [§ 78C-128] containing language formally creating the Interstate Compact, make conforming changes replacing [Secretary of State] with the commission in Section 17 [§ 78C-127], and make additional conforming changes in Section 4 [§ 78C-114]. Since the operation of Alternative B is conditioned on that alternative being adopted by at least five states, a state that elects to participate in the interstate compact before the interstate compact becomes effective may wish either to continue its existing athlete agent registration program until the interstate compact becomes effective and the commission created by the compact is in operation or enact Alternative A on an interim basis.

"§ 78C-115. Registration as athlete agent; application; requirements; reciprocal registration.

(a) An applicant for registration as an athlete agent shall submit an application for registration to the Secretary of State in a form prescribed by the Secretary of State. The applicant must be an individual, and the application must be signed by the applicant under penalty of perjury. The application must contain at least the following:

(1) The name and date and place of birth of the applicant and the following

contact information for the applicant:

- a. The address of the applicant's principal place of ~~business;~~
business.
- b. Work and mobile telephone ~~numbers; and~~ numbers.
- c. Any means of communicating electronically, including a facsimile
number, electronic-mail address, and personal and business or
employer ~~websites; websites.~~

Staff Note: Subdivision (a)(1) expands G.S. 78C-89(a)(1) to require an application for registration as an athlete agent to contain not just the applicant's name and address of principal place of business but also the applicant's date and place of birth, work and mobile telephone numbers, and electronic mail addresses and social media accounts.

- (2) The name of the applicant's business or employer, if applicable, including
for each business or employer, its mailing address, telephone number,
organization form, and the nature of the ~~business; business.~~

Staff Note: Subdivision (a)(2) expands G.S. 78C-89(a)(2) to require an application to contain not just the name of the applicant's business or employer but also the business or employer's mailing address, telephone number, organization form, and nature of business.

- (3) Each social-media account with which the applicant or the applicant's
business or employer is ~~affiliated; affiliated.~~

Staff Note: Subdivision (a)(3) is new.

- (4) Each business or occupation in which the applicant engaged within five
years before the date of the application, including self-employment and
employment by others, and any professional or occupational license,
registration, or certification held by the applicant during that ~~time; time.~~

Staff Note: Subdivision (a)(4) is comparable to G.S. 78C-89(a)(3) but expands it by adding the "including" language.

(5) A description of the applicant's:

- a. Formal training as an athlete ~~agent;~~ agent.
- b. Practical experience as an athlete ~~agent; and~~ agent.
- c. Educational background relating to the applicant's activities as an athlete ~~agent;~~ agent.

Staff Note: Subdivision (a)(5) is comparable to G.S. 78C-89(a)(4).

(6) The name of each **student** athlete for whom the applicant acted as an athlete agent within five years before the date of the application or, if the individual is a minor, the name of the parent or guardian of the minor, together with the athlete's sport and last-known ~~team;~~ team.

Staff Note: Subdivision (a)(6) is comparable to G.S. 78C-89(a)(6) but expands it by adding the language "or, if the individual is a minor, the name of the parent or guardian of the minor."

At its May 6, 2016, meeting, the General Statutes Commission changed "student athlete" to "athlete" at the suggestion of Paul Pogge, Associate Athletic Director, University of North Carolina at Chapel Hill. Mr. Pogge pointed out that a student athlete cannot have an athlete agent.

(7) The name and address of each person ~~that;~~ to which any of the following
apply:

- a. Is a partner, member, officer, manager, associate, or profit sharer or directly or indirectly holds an equity interest of five percent (5%) or greater of the athlete agent's business if it is not a ~~corporation; and~~ corporation.
- b. Is an officer or director of a corporation employing the athlete agent or a shareholder having an interest of five percent (5%) or greater in the ~~corporation;~~ corporation.

Staff Note: Subdivision (a)(7) is comparable to G.S. 78C-89(a)(7) but is phrased differently. Also, in sub-subdivision (a)(7)a., the language "directly or indirectly holds an equity interest of five percent (5%) or greater" is new.

(8) A description of the status of any application by the applicant, or any person named under subdivision (7) of this subsection, for a state or federal business, professional, or occupational license, other than as an athlete agent, from a state or federal agency, including any denial, refusal to renew, suspension, withdrawal, or termination of the license and any reprimand or censure related to the ~~license;~~ license.

Staff Note: Subdivision (a)(8) is comparable to G.S. 78C-89(a)(12) but is phrased differently.

(9) Whether the applicant, or any person named under subdivision (7) of this subsection, has pleaded guilty or no contest to, has been convicted of, or has charges pending for, a crime that would involve moral turpitude or be a felony if committed in this State and, if so, identification ~~of:~~ of all the following:

- a. The ~~crime;~~ crime.
- b. The law-enforcement agency ~~involved; and~~ involved.
- c. If applicable, the date of the conviction and the fine or penalty ~~imposed;~~ imposed.

Staff Note: Subdivision (a)(9) is comparable to G.S. 78C-89(a)(8) but expands it to require more information about the crime.

(10) Whether, within 15 years before the date of application, the applicant, or any person named under subdivision (7) of this subsection, has been a defendant or respondent in a civil proceeding, including a proceeding seeking an adjudication of ~~legal incompetence~~ incompetence and, if so,

the date and a full explanation of each ~~proceeding~~; proceeding.

Staff Note: Subdivision (a)(10) is new.

At its May 6, 2016, meeting, the General Statutes Commission discussed, without deciding, whether the bracketed term "legal incompetence" was the appropriate term to use in subdivision(a)(10).

(11) Whether the applicant, or any person named under subdivision (7) of this subsection, has an unsatisfied judgment or a judgment of continuing effect, including alimony or a domestic order in the nature of child support, which is not current at the date of the ~~application~~; application.

Staff Note: Subdivision (a)(11) is new.

At its May 6, 2016, meeting, the General Statutes Commission removed the brackets from "alimony" and flagged subdivision (a)(11) for further consideration of the language "an unsatisfied judgment or a judgment of continuing effect... which is not current at the date of the application."

(12) Whether, within 10 years before the date of application, the applicant, or any person named under subdivision (7) of this subsection, ~~was adjudicated bankrupt~~ has filed a petition in bankruptcy or was an owner of a business that ~~was adjudicated bankrupt. has filed a petition in~~ bankruptcy.

Staff Note: Subdivision (a)(12) is new.

At its May 6, 2016, meeting, the General Statutes Commission replaced "was adjudicated bankrupt" with "has filed a petition in bankruptcy" but flagged subdivision (a)(12) for further consideration.

(13) Whether there has been any administrative or judicial determination that the applicant, or any person named under subdivision (7) of this subsection, made a false, misleading, deceptive, or fraudulent ~~representation~~; representation.

Staff Note: Subdivision (a)(13) is comparable to G.S. 78C-89(a)(9).

(14) Each instance in which conduct of the applicant, or any person named under subdivision (7) of this subsection, resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic, intercollegiate, or professional athletic event on a student athlete or a sanction on an educational ~~institution;~~ institution.

Staff Note: Subdivision (a)(14) is comparable to G.S. 78C-89(a)(10) but expands it to add the language "or professional athletic event" and "a sanction on an."

(15) Each sanction, suspension, or disciplinary action taken against the applicant, or any person named under subdivision (7) of this subsection, arising out of occupational or professional ~~conduct;~~ conduct.

Staff Note: Subdivision (a)(15) is comparable to G.S. 78C-89(a)(11).

(16) Whether there has been a denial of an application for, suspension or revocation of, refusal to renew, or abandonment of, the registration or licensure of the applicant, or any person named under subdivision (7) of this subsection, as an athlete agent in any ~~state;~~ state.

Staff Note: Subdivision (a)(16) is comparable to G.S. 78C-89(a)(12) but expands it to add the language "or abandonment of" and changes it to omit the language "or licensure" from the phrase "the registration or licensure of the applicant."

At its June 3, 2016, meeting, the General Statutes Commission flagged subdivision (a)(16) for further consideration of whether the language "or licensure" should be retained in the phrase "the registration or licensure of the applicant," noting that some states may issue licenses to athlete agents and all states may not adopt the Revised Uniform Act.

(17) Each state in which the applicant currently is registered or licensed as an athlete agent or has applied to be registered or licensed as an athlete ~~agent;~~ agent.

Staff Note: Subdivision (a)(17) is new.

(18) If the applicant is certified or registered by a professional league or players

~~association;~~ association, all of the following:

a. The name of the league or ~~association;~~ association.

b. The date of certification or registration, and the date of expiration
of the certification or registration, ~~if any; and if any.~~

c. If applicable, the date of any denial of an application for,
suspension or revocation of, refusal to renew, withdrawal of, or
termination of, the certification or registration or any reprimand or
censure related to the certification or ~~registration; and~~ registration.

Staff Note: Subdivision (a)(18) is new.

(19) Any additional information required by the Secretary of State.

Staff Note: Subdivision (a)(19) is new.

(b) Instead of proceeding under subsection (a) of this section, an individual registered
or licensed as an athlete agent in another state may apply for registration as an athlete agent in
this State by submitting to the ~~[Secretary of State];~~ Secretary of State all of the following:

(1) A copy of the application for registration or licensure in the other ~~state;~~
state.

(2) A statement that identifies any material change in the information on the
application or verifies there is no material change in the information,
signed under penalty of ~~perjury; and~~ perjury.

(3) A copy of the certificate of registration or licensure from the other state.

Staff Note: Subsections (b) and (c) of this section, like G.S. 78C-89(b), provide for reciprocal
registration of athlete agents. Under subsections (b) and (c), if an individual registered in

another state applies for registration in this State, the Secretary of State is required to grant the registration if the Secretary of State determines that the law in the other state is substantially similar to or more restrictive than the law in this State, the registration is in good standing, and no proceeding involving the individual's conduct as an athlete agent is pending in any state in which the individual is registered. Note that, under G.S. 78C-89(b), the application for registration in the other state must have been submitted in the other state within six months immediately preceding the submission of the application in this State.

At its June 3, 2016, meeting, the General Statutes Commission flagged subsection (b) for further consideration of whether the "licensure" language and the six-month requirement in G.S. 78C-89(b) should be retained.

(c) The Secretary of State shall issue a certificate of registration to an individual who applies for registration under subsection (b) of this section if the Secretary of State ~~determines:~~ determines all of the following:

(1) The application and registration or licensure requirements of the other state are substantially similar to or more restrictive than this ~~{act}; and~~

Article.

(2) The registration or license has not been revoked or suspended and no action involving the individual's conduct as an athlete agent is pending against the individual or the individual's registration or licensure in any state.

Staff Note: See staff note under subsection (c). Subdivision (c)(2) has no counterpart in G.S. 78C-89(b).

(d) For purposes of implementing subsection (c) of this section, the Secretary of State ~~shall:~~ shall do all of the following:

(1) Cooperate with national organizations concerned with athlete agent issues and agencies in other states which register or license athlete agents to develop a common registration [or licensure] form and determine which states have laws that are substantially similar to or more restrictive than

1 this ~~act~~; and Article.

2 (2) Exchange information, including information related to actions taken
3 against registered athlete agents or their registrations, with those
4 organizations and agencies.

5 *Staff Note: Subsection (d) is new.*

6
7 *Staff Note re G.S. 78C-89(c): G.S. 78C-89(c) provides that "[a]n application filed under this*
8 *section is a "public record" within the meaning of Chapter 132 of the General Statutes." There*
9 *is no comparable provision in Section 5 of the Revised Uniform Athlete Agents Act (2015) [§*
10 *78C-115 of this draft]. The Official Comment to Section 5 of the Uniform Act indicates that the*
11 *2000 Uniform Athlete Agents Act "contained bracketed language that an application filed under*
12 *the act was a public record. The intention of the [Uniform Law Commission's drafting*
13 *committee] was not to rewrite the public record law of any state, but to default to that law,*
14 *whatever it is. Thus, in some states, certain information on the application, such as a trade*
15 *secret, may not be a public record, while the public record law in another state may require a*
16 *different result."*

17
18 *At its June 3, 2016, meeting, the General Statutes Commission flagged G.S. 78C-89(c) for*
19 *further consideration and input.*

20
21 **"§ 78C-116. Certificate of registration; issuance or denial; renewal.**

22 (a) Except as otherwise provided in subsection (b) of this section, the Secretary of
23 State shall issue a certificate of registration to an applicant for registration who complies with
24 G.S. 78C-115(a).

25 *Staff Note: Subsection (a) is comparable to G.S. 78C-90(a) but uses "applicant for registration"*
26 *instead of "individual" and omits "or whose application has been accepted under G.S. 78C-*
27 *89(b)."*

28
29 (b) The Secretary of State may refuse to issue a certificate of registration to an
30 applicant for registration under G.S. 78C-115(a) if the Secretary of State determines that the
31 applicant has engaged in conduct that significantly adversely reflects on the applicant's fitness to
32 act as an athlete agent. In making the determination, the Secretary of State may consider
33 whether the applicant ~~has~~: has done any of the following:

- (1) Pleaded guilty or no contest to, has been convicted of, or has charges pending for, a crime that would involve moral turpitude or be a felony if committed in this ~~state;~~ State.
- (2) Made a materially false, misleading, deceptive, or fraudulent representation in the application or as an athlete ~~agent;~~ agent.
- (3) Engaged in conduct that would disqualify the applicant from serving in a fiduciary ~~capacity;~~ capacity.
- (4) Engaged in conduct prohibited by ~~Section 14;~~ G.S. 78C-114.
- (5) Had a registration or licensure as an athlete agent suspended, revoked, or denied in any ~~state;~~ state.
- (6) Been refused renewal of registration or licensure as an athlete agent in any ~~state;~~ state.
- (7) Engaged in conduct resulting in imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic, intercollegiate, or professional athletic event on a student athlete or a sanction on an educational ~~institution;~~ or institution.
- (8) Engaged in conduct that ~~-~~adversely reflects on the applicant's credibility, honesty, or integrity.

Staff Note: Subsection (b) is comparable to G.S. 78C-90(b).

(c) In making a determination under subsection (b) of this section, the Secretary of State shall ~~consider;~~ consider all of the following:

- (1) How recently the conduct ~~occurred;~~ occurred.
- (2) The nature of the conduct and the context in which it ~~occurred;~~ and

1 occurred.

2 (3) Other relevant conduct of the applicant.

3 *Staff Note: Subsection (c) is comparable to G.S. 78C-90(c).*

4
5 (d) An athlete agent registered under subsection (a) of this section may apply to
6 renew the registration by submitting an application for renewal in a form prescribed by the
7 Secretary of State. The applicant shall sign the application for renewal under penalty of perjury
8 and include current information on all matters required in an original application for registration.

9 *Staff Note: Subsection (d) is comparable to G.S. 78C-90(d).*

10
11 (e) An athlete agent registered under G.S. 78C-115(c) may renew the registration by
12 proceeding under subsection (d) of this section or, if the registration or licensure in the other
13 state has been renewed, by submitting to the Secretary of State copies of the application for
14 renewal in the other state and the renewed registration or licensure from the other state. The
15 Secretary of State shall renew the registration if the Secretary of State ~~determines:~~ determines all
16 of the following:

17 (1) The registration or licensure requirements of the other state are
18 substantially similar to or more restrictive than this ~~fact]; and Article.~~

19 (2) The renewed registration or licensure has not been suspended or revoked
20 and no action involving the individual's conduct as an athlete agent is
21 pending against the individual or the individual's registration or licensure
22 in any state.

23 *Staff Note: Subsection (e) is comparable to G.S. 78C-90(e). However, the Official Comment to*
24 *Section 6 of the Revised Uniform Athlete Agents Act (2015) [§ 78C-116] indicates that Section 6*
25 *[§ 78C-116] "has been revised to reflect the true reciprocal registration provisions of Section 5*
26 *[§ 78C-115].*

27
28 (f) A certificate of registration or renewal of registration under this Article is valid

for ~~[two] years.~~ one year.

Staff Note: Subsection (f) is comparable to G.S. 78C-90(f). However, G.S. 78C-90(f) provides for a validation period of one year rather than the bracketed two years.

At its June 3, 2016, meeting, the General Statutes Commission substituted one year for the bracketed two years but flagged the substitution for further consideration and input.

"§ 78C-117. Suspension, revocation, or refusal to renew registration.

(a) The Secretary of State may limit, suspend, revoke, or refuse to renew a registration of an individual registered under G.S. 78C-116(a) for conduct that would have justified refusal to issue a certificate of registration under G.S. 78C-116(b).

(b) The Secretary of State may suspend or revoke the registration of an individual registered under G.S. 78C-115(c) or renewed under G.S. 78C-116(e) for any reason for which the Secretary of State could have refused to grant or renew registration or for conduct that would justify refusal to issue a certificate of registration under G.S. 78C-116(b).

Staff Note: § 78C-117 is similar to G.S. 78C-91 but reflects the reciprocal registration provisions of §§ 78C-115 and 78C-116. However, § 78C-117 has no counterpart to G.S. 78C-91(b), which provides that the Secretary of State may deny, suspend, revoke, or renew a registration "only after proper notice and an opportunity for a hearing in accordance with the Administrative Procedures Act pursuant to Article 3 of Chapter 150B of the General Statutes." However, § 78C-113(a) expressly provides that "Chapter 150B of the General Statutes applies to this Article."

"§ 78C-118. Temporary registration.

The Secretary of State may issue a temporary certificate of registration as an athlete agent while an application for registration or renewal of registration is pending.

Staff Note: § 78C-118 is comparable to G.S. 78C-92.

"§ 78C-119. Registration and renewal fees.

An application for registration or renewal of registration as an athlete agent must be accompanied by a fee in the following amount:

- (1) ~~[\$] for an initial application for registration;~~ Initial application for
registration [\$200.00]
- (2) ~~[\$] for registration based on a certificate of registration issued by another~~
~~state;~~ Application for registration based on a certificate of registration or
licensure issued by another state [\$200.00]
- (3) ~~[\$] for an application for renewal of registration; or~~ Application for
renewal of registration [\$200.00]
- (4) ~~[\$] for renewal of registration based on a renewal of registration in~~
~~another state.~~ Application for renewal of registration based on a renewal of
registration or licensure in another state [\$200.00]

Staff Note: § 78C-119 is comparable to G.S. 78C-93 in setting the fees for registration and renewal of registration. The bracketed fee amounts are the current amounts set out in G.S. 78C-93.

At its June 3, 2016, meeting, the General Statutes Commission flagged § 78C-119 for further consideration and input.

Alternative B for Sections 5 through 9 [§§ 78C-115 through 78C-119]
(Interstate Compact Registry)

Uniform Law Commission Legislative Note: As discussed in the Legislative Note for Alternative A, a state adopting Alternative B also will have to amend Section 2 [§ 78C-112] to include the definition of commission for the new central registration agency and the definition of “compact” for the interstate compact, select Alternative B for Section 3(a) [§ 78C-113(a)], add bracketed Section 18 [§ 78C-128] containing language formally creating the Interstate Compact, make conforming changes replacing [Secretary of State] with the commission in Section 17 [§ 78C-1287], and make additional conforming changes in Section 4 [§ 78C-114]. Since the operation of Alternative B is conditioned on that alternative being adopted by at least five states, a state that elects to participate in the interstate compact before the interstate compact becomes effective may wish either to continue its existing athlete agent registration program until the interstate compact becomes effective and the commission created by the compact is in operation or enact Alternative A on an interim basis.

“78C-115. Commission on Interstate Registration of Athlete Agents.

- (a) ~~The Commission on Interstate Registration of Athlete Agents is created. The~~

1 ~~Commission is a body corporate and joint agency of the states that enact an act substantially~~
2 ~~similar to this Article. The Commission consists of one member from each state that enacts such~~
3 ~~an act appointed by the governor of that state.~~

4 (b) ~~The first meeting of the Commission must be held not later than 90 days after the~~
5 ~~fifth state enacts an act substantively similar to this Article. A majority of the states that enact~~
6 ~~such an act constitutes a quorum for the conduct of business.~~

7 (c) ~~At its first meeting, the Commission shall adopt bylaws that provide for:~~

8 (1) ~~An executive committee to manage day to day affairs of the Commission;~~

9 (2) ~~The operation of the Commission, including employment of necessary~~
10 ~~staff;~~

11 (3) ~~Maintaining a location for the registration of athlete agents in the states~~
12 ~~that enact an act substantially similar to this [act];~~

13 (4) ~~Establishing the registration fee and the apportionment of the fee among~~
14 ~~the states that enact an act substantially similar to this [act]; and~~

15 (5) ~~Any other matter necessary for efficient operation of the Commission.~~

16 (d) ~~The Commission:~~

17 (1) ~~Shall pay or provide for payment of the reasonable expenses of the~~
18 ~~establishment, organization, and ongoing activities of the Commission.~~

19 (2) ~~May accept a grant of money, equipment, supplies, materials, or services~~
20 ~~and donations;~~

21 (3) ~~May assess each member state annually on a basis determined by the~~
22 ~~Commission to cover operation costs of the Commission not funded by~~
23 ~~registration fees imposed under subdivision (4) of subsection (c) of this~~

1 ~~section.~~

2 ~~(4) May not incur an obligation before securing funds adequate to meet the~~

3 ~~obligation;~~

4 ~~(5) May not pledge the credit of a member state, except with the authority of~~

5 ~~the member state; and~~

6 ~~(6) Shall keep an accurate account of receipts and disbursements, under audit~~

7 ~~and accounting procedures established under the Commission's bylaws.~~

8 ~~(e) The receipt and disbursement of funds by the Commission must be audited yearly~~

9 ~~by a certified or licensed public accountant, and the Commission shall include the audit report in~~

10 ~~an annual report of the Commission.~~

11 *Staff Note: This section creates the Commission on Interstate Registration of Athlete Agents and*
12 *provides for its organization, powers, and duties, including composition, meeting and quorum,*
13 *bylaws, and other requirements. The existence of the compact is conditioned on at least five*
14 *states adopting Alternative B in substantially the same form. The membership of the*
15 *Commission will consist of one member from each state that adopts Alternative B.*

16
17 *At its June 3, 2016, meeting, the General Statutes Commission decided not to recommend the*
18 *interstate compact registration option.*

19
20 ~~"§ 78C-116. Registration as athlete agent; application; requirements.~~

21 ~~An applicant for registration as an athlete agent shall submit an application for~~

22 ~~registration to the Commission in a form prescribed by the Commission. The applicant must be~~

23 ~~an individual, and the application must be signed by the applicant under penalty of perjury. The~~

24 ~~application must contain at least the following:~~

25 ~~(1) The name and date and place of birth of the applicant and the following~~

26 ~~contact information for the applicant:~~

27 ~~a. The address of the applicant's principal place of business;~~

28 ~~b. Work and mobile telephone numbers; and~~

e. Any means of communicating electronically, including a facsimile number, electronic mail address, and personal and business or employer websites;

(2) The name of the applicant's business or employer, if applicable, including for each business or employer, its mailing address, telephone number, organization form, and the nature of the business;

(3) Each social media account with which the applicant or the applicant's business or employer is affiliated;

(4) Each business or occupation in which the applicant engaged within five years before the date of the application, including self-employment and employment by others, and any professional or occupational license, registration, or certification held by the applicant during that time;

(5) A description of the applicant's:

a. Formal training as an athlete agent;

b. Practical experience as an athlete agent; and

c. Educational background relating to the applicant's activities as an athlete agent;

(6) The name of each student athlete for whom the applicant acted as an athlete agent within five years before the date of the application or, if the athlete is a minor, the name of the parent or guardian of the minor, together with the athlete's sport and last known team;

(7) The name and address of each person that:

a. Is a partner, member, officer, manager, associate, or profit sharer

1 ~~or directly or indirectly holds an equity interest of five percent or~~
2 ~~greater of the athlete agent's business if it is not a corporation; and~~

3 ~~b. Is an officer or director of a corporation employing the athlete~~
4 ~~agent or a shareholder having an interest of five percent or greater~~
5 ~~in the corporation;~~

6 ~~(8) A description of the status of any application by the applicant, or any~~
7 ~~person named under subdivision (7) of this subsection, for a state or~~
8 ~~federal business, professional, or occupational license, other than as an~~
9 ~~athlete agent, including any denial, refusal to renew, suspension,~~
10 ~~withdrawal, or termination of the license and any reprimand or censure~~
11 ~~related to the license;~~

12 ~~(9) Whether the applicant, or any person named under subdivision (7) of this~~
13 ~~subsection, has pleaded guilty or no contest to, has been convicted of, or~~
14 ~~has charges pending for, a crime involving moral turpitude or which is a~~
15 ~~felony and, if so, identify:~~

16 ~~a. The crime;~~

17 ~~b. The law enforcement agency involved; and~~

18 ~~c. If applicable, the date of the conviction and the fine or penalty~~
19 ~~imposed;~~

20 ~~(10) Whether, within 15 years before the date of application, the applicant, or~~
21 ~~any person named under subdivision (7) of this subsection, has been a~~
22 ~~defendant or respondent in a civil proceeding, including a proceeding~~
23 ~~seeking an adjudication of legal incompetence, and, if so, the date and a~~

1 full explanation of each proceeding;

2 (11) Whether the applicant, or any person named under subdivision (7) of this
3 subsection, has an unsatisfied judgment or a judgment of continuing
4 effect, including alimony or a domestic order in the nature of child
5 support, which is not current at the date of the application;

6 (12) Whether, within 10 years before the date of application, the applicant, or
7 any person named under subdivision (7) of this subsection, was
8 adjudicated bankrupt or was an owner of a business that was adjudicated
9 bankrupt;

10 (13) Whether there has been any administrative or judicial determination that
11 the applicant, or any person named under subdivision (7) of this
12 subsection, made a false, misleading, deceptive, or fraudulent
13 representation;

14 (14) Each instance in which conduct of the applicant, or any person named
15 under subdivision (7) of this subsection, resulted in the imposition of a
16 sanction, suspension, or declaration of ineligibility to participate in an
17 interscholastic, intercollegiate, or professional athletic event on a student
18 athlete or a sanction on an educational institution;

19 (15) Each sanction, suspension, or disciplinary action taken against the
20 applicant, or any person named under subdivision (7) of this subsection,
21 arising out of occupational or professional conduct;

22 (16) Whether there has been a denial of an application for, suspension or
23 revocation of, refusal to renew, or abandonment of, the registration of the

applicant, or any person named under subdivision (7) of this subsection, as
an athlete agent in any state;

(17) Each state in which the applicant currently is registered as an athlete agent
or has applied to be registered as an athlete agent;

(18) If the applicant is certified or registered by a professional league or players
association;

a. The name of the league or association;

b. The date of certification or registration, and the date of expiration
of the certification or registration, if any; and

c. If applicable, the date of any denial of an application for,
suspension or revocation of, refusal to renew, withdrawal of, or
termination of, the certification or registration or any reprimand or
censure related to the certification or registration; and

(19) Any additional information required by the Commission.

Staff Note: This section parallels § 78C-115 of Alternative A in setting out the application
requirements for registration as an athlete agent.

Uniform Law Commission Legislative Note: Paragraphs (10) and (11) use the terms “legal
incompetence” and “alimony”. If those are not the appropriate terms for a state, the insertion of
the state specific terms is not intended to be a deviation from the substantially similar
requirement for the adoption of the Interstate Compact.

“§ 78C-117. Certificate of registration; issuance or denial; renewal.

(a) Except as otherwise provided in subsection (b) of this section, the Commission
shall issue a certificate of registration to an applicant for registration who complies with G.S.
78C-116.

(b) The Commission may refuse to issue a certificate of registration to an applicant

for registration under G.S. 78C-116 if the Commission determines that the applicant has engaged in conduct that significantly adversely reflects on the applicant's fitness to act as an athlete agent.

In making the determination, the Commission may consider whether the applicant has:

(1) Pleaded guilty or no contest to, has been convicted of, or has charges pending for, a crime involving moral turpitude or which is a felony;

(2) Made a materially false, misleading, deceptive, or fraudulent representation in the application or as an athlete agent;

(3) Engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity;

(4) Engaged in conduct prohibited by G.S. 78C-114.

(5) Had a registration as an athlete agent suspended, revoked, or denied in any state;

(6) Been refused renewal of registration as an athlete agent in any state;

(7) Engaged in conduct resulting in imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic, intercollegiate, or professional athletic event on a student athlete or a sanction on an educational institution; or

(8) Engaged in conduct that adversely reflects on the applicant's credibility, honesty, or integrity.

(e) In making a determination under subsection (b) of this section, the Commission shall consider:

(1) How recently the conduct occurred;

(2) The nature of the conduct and the context in which it occurred; and

(3) Other relevant conduct of the applicant.

(d) An athlete agent registered under subsection (a) of this section may apply to renew the registration by submitting an application for renewal in a form prescribed by the Commission. The applicant shall sign the application for renewal under penalty of perjury and include current information on all matters required in an original application for registration.

(e) A certificate of registration or a renewal of registration under this Article is valid for [two] years.

Staff Note: This section parallels § 78C-116 of Alternative A in authorizing the issuance or denial of a certificate of registration or the renewal of registration.

~~"§ 78C-118. Limitation, suspension, revocation, or refusal to renew registration.~~

~~The Commission may limit, suspend, revoke, or refuse to renew a registration of an individual registered under G.S. 78C-117 for conduct that would have justified refusal to issue a certificate of registration under G.S. 78C-117(b).~~

Staff Note: This section parallels § 78C-117(a) of Alternative A in authorizing the Commission to limit, suspend, revoke, or refuse to renew a registration.

~~"§ 78C-119. Temporary registration.~~

~~The Commission may issue a temporary certificate of registration as an athlete agent while an application for registration or renewal of registration is pending.~~

Staff Note: This section parallels § 78C-118 of Alternative A in authorizing the Commission to issue a temporary certificate of registration.

End of Alternatives

"§ 78C-120. Required form of agency contract.

(a) An agency contract must be in a record signed by the parties.

Staff Note: Subsection (a) is comparable to G.S. 78C-94(a). The term "record" is defined in § 78C-112(14), and the term "sign" is defined in § 78C-112(17).

(b) An agency contract must ~~contain;~~ contain all of the following:

- (1) A statement that the athlete agent is registered as an athlete agent in this State and a list of any other states in which the agent is registered as an athlete ~~agent;~~ agent.
- (2) The amount and method of calculating the consideration to be paid by the student athlete for services to be provided by the agent under the contract and any other consideration the agent has received or will receive from any other source for entering into the contract or providing the ~~services;~~ services.
- (3) The name of any person not listed in the agent's application for registration or renewal of registration which will be compensated because the athlete signed the ~~contract;~~ contract.
- (4) A description of any expenses the athlete agrees to ~~reimburse;~~ reimburse.
- (5) A description of the services to be provided to the ~~athlete;~~ athlete.
- (6) The duration of the ~~contract; and~~ contract.
- (7) The date of execution.

Staff Note: Subdivisions (b)(2) through (b)(7) are comparable to G.S. 78C-94(b)(1) through (b)(6). Subdivision (b)(1) is added to require an agency contract to contain a statement that the athlete agent is registered in the state and a list of any other states in which the agent is registered.

(c) Subject to subsection (g) of this section, an agency contract must contain a conspicuous notice in boldface type and in substantially the following form:

~~WARNING TO STUDENT ATHLETE~~ Warning to student athlete

~~IF YOU SIGN THIS CONTRACT:~~ If you sign this contract:

~~(1) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT
ATHLETE IN YOUR SPORT;~~ You may lose your eligibility to compete as a student
athlete in your sport;

~~(2) IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER
SIGNING THIS CONTRACT OR BEFORE THE NEXT SCHEDULED ATHLETIC
EVENT IN WHICH YOU PARTICIPATE, WHICHEVER OCCURS FIRST, BOTH YOU
AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR THAT
YOU HAVE ENTERED INTO THIS CONTRACT AND PROVIDE THE NAME AND
CONTACT INFORMATION OF THE ATHLETE AGENT; AND~~ If you have an athletic
director, within 72 hours after signing this contract or before the next scheduled athletic
event in which you participate, whichever occurs first, both you and your athlete agent
must notify your athletic director that you have entered into this contract and provide the
name and contact information on the athlete agent;

~~(3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER
SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE
YOUR ELIGIBILITY AS A STUDENT ATHLETE IN YOUR SPORT.~~ You may cancel
this contract within 14 days after signing it. Cancellation of this contract may not reinstate
your eligibility as a student athlete in your sport.

Staff Note: Subsection (c) is comparable to G.S. 78C-94(c) but the form is modified in light of the notice requirements of § 78C-121(b) and (c). Also, subsection (c) does not require that the form notify a student athlete that the athlete waives the athlete's attorney-client privilege with respect to the agency contract. In reference to the waiver of attorney-client privilege, § 78C-120 does not contain a provision comparable to G.S. 78C-94(f), which reads: "The waiver of attorney-client privilege does not affect those privileges between client and attorney when the

1 attorney is not an athlete agent."

2
3 *At its June 3, 2016, meeting, the General Statutes Commission adopted Commissioner Korzen's*
4 *suggestion to change the notice by not using all upper-case letters.*

5
6 (d) An agency contract must be accompanied by a separate record signed by the
7 student athlete or, if the athlete is a minor, the parent or guardian of the athlete acknowledging
8 that signing the contract may result in the loss of the athlete's eligibility to participate in the
9 athlete's sport.

10 **Staff Note:** Subsection (d) is new.

11
12 (e) A student athlete or, if the athlete is a minor, the parent or guardian of the athlete
13 may void an agency contract that does not conform to this section. If the contract is voided, any
14 consideration received from the athlete agent under the contract to induce entering into the
15 contract is not required to be returned.

16 **Staff Note:** Subsection (e) is comparable to G.S. 78C-94(d). However, subsection (e) reflects
17 the rare circumstance of when an agency contract involves a student athlete who is a minor.

18
19 (f) At the time an agency contract is executed, the athlete agent shall give the student
20 athlete or, if the athlete is a minor, the parent or guardian of the athlete a copy in a record of the
21 contract and the separate acknowledgement required by subsection (d) of this section.

22 **Staff Note:** Subsection (f) is comparable to G.S. 78C-94(e). However, subsection (f) addresses
23 the rare case where an agency contract involves a student athlete who is a minor and adds the
24 requirement that the athlete agent give the separate acknowledgment required by subsection (d)
25 of this section.

26
27 (g) If a student athlete is a minor, an agency contract must be signed by the parent or
28 guardian of the minor and the notice required by subsection (c) of this section must be revised
29 accordingly.

30 **Staff Note:** Subsection (g) is new.

"§ 78C-121. Notice to educational institution.

(a) In this section, "communicating or attempting to communicate" means contacting or attempting to contact by an in-person meeting, a record, or any other method that conveys or attempts to convey a message.

Staff Note: Subsection (a) is new. It defines "communicating or attempting to communicate" for purposes of subsections (f) and (g) of this section.

(b) Not later than 72 hours after entering into an agency contract or before the next scheduled athletic event in which the student athlete may participate, whichever occurs first, the athlete agent shall give notice in a record of the existence of the contract to the athletic director of the educational institution at which the athlete is enrolled or at which the agent has reasonable grounds to believe the athlete intends to enroll.

Staff Note: Subsection (b) is comparable to G.S. 78C-95(a). There are stylistic differences.

(c) Not later than 72 hours after entering into an agency contract or before the next scheduled athletic event in which the student athlete may participate, whichever occurs first, the athlete shall inform the athletic director of the educational institution at which the athlete is enrolled that the athlete has entered into an agency contract and the name and contact information of the athlete agent.

Staff Note: Subsection (c) is comparable to G.S. 78C-95(b) in requiring a student athlete to notify an educational institution that the athlete has entered into an agency contract. However, subsection (c) adds the requirement that the notice include the name and contact information of the athlete agent. Also, there are stylistic differences between the two subsections.

(d) If an athlete agent enters into an agency contract with a student athlete and the athlete subsequently enrolls at an educational institution, the agent shall notify the athletic director of the institution of the existence of the contract not later than 72 hours after the agent knew or should have known the athlete enrolled.

Staff Note: Subsection (d) is new.

(e) If an athlete agent has a relationship with a student athlete before the athlete enrolls in an educational institution and receives an athletic scholarship from the institution, the agent shall notify the institution of the relationship not later than 10 days after the enrollment if the agent knows or should have known of the enrollment ~~and~~ and any of the following has occurred:

(1) The relationship was motivated in whole or part by the intention of the agent to recruit or solicit the athlete to enter an agency contract in the ~~future; or future.~~

(2) The agent directly or indirectly recruited or solicited the athlete to enter an agency contract before the enrollment.

Staff Note: Subsection (e) is new.

(f) An athlete agent shall give notice in a record to the athletic director of any educational institution at which a student athlete is enrolled before the agent communicates or attempts to communicate ~~with~~ with any of the following:

(1) The athlete or, if the athlete is a minor, a parent or guardian of the athlete, to influence the athlete or parent or guardian to enter into an agency ~~contract; or contract.~~

(2) Another individual to have that individual influence the athlete or, if the athlete is a minor, the parent or guardian of the athlete to enter into an agency contract.

Staff Note: Subsection (f) is new.

(g) If a communication or attempt to communicate with an athlete agent is initiated

by a student athlete or another individual on behalf of the athlete, the agent shall notify in a record the athletic director of any educational institution at which the athlete is enrolled. The notification must be made not later than 10 days after the communication or attempt.

Staff Note: Subsection (g) is new.

(h) An educational institution that becomes aware of a violation of this Article by an athlete agent shall notify the ~~Secretary of State~~ ~~Commission~~ and any professional league or players association with which the institution is aware the agent is licensed or registered of the violation.

Staff Note: Subsection (h) is new.

At its June 3, 2016, meeting, the General Statutes Commission decided to recommend continuation of the state registration system.

"§ 78C-122. Student athlete's right to cancel.

(a) A student athlete or, if the athlete is a minor, the parent or guardian of the athlete may cancel an agency contract by giving notice in a record of cancellation to the athlete agent not later than 14 days after the contract is signed.

(b) A student athlete or, if the athlete is a minor, the parent or guardian of the athlete may not waive the right to cancel an agency contract.

(c) If a student athlete, parent, or guardian cancels an agency contract, the athlete, parent, or guardian is not required to pay any consideration under the contract or return any consideration received from the athlete agent to influence the athlete to enter into the contract.

Staff Note: § 78C-122 is comparable to G.S. 78C-96 in giving a student athlete the right to cancel an agency contract within 14 days of signing the contract. The right may not be waived, and the athlete is not required to pay any consideration under the contract or return any consideration received from the agent to influence the athlete to enter into the contract.

Unlike G.S. 78C-96, § 78C-122 provides that, if the student athlete is a minor, the parent or guardian of the athlete has a right to cancel the agency contract, may not waive the right, and is

not required to pay any consideration under the contract or return any consideration received.

"§ 78C-123. Required records.

(a) An athlete agent shall create and retain for five years records of all the following:

(1) The name and address of each individual represented by the ~~agent;~~ agent.

(2) Each agency contract entered into by the ~~agent; and~~ agent.

(3) The direct costs incurred by the agent in the recruitment or solicitation of each student athlete to enter into an agency contract.

(b) Records described in subsection (a) of this section are open to inspection by the

~~Secretary of State~~ ~~Commission~~ during normal business hours.

Staff Note: § 78C-123 is comparable to G.S. 78C-97 in requiring an athlete agent to create and retain for five years records of specified information which must be open to inspection by the enforcement agency during normal business hours. However, G.S. 78C-97 also provides that the student athlete is deemed to waive the attorney-client privilege with respect to the records retained by the agent, subject to G.S. 78C-94(f). Also, there are stylistic differences between the two sections.

At its June 3, 2016, meeting, the General Statutes Commission decided to recommend continuation of the state registration system.

"§ 78C-124. Prohibited conduct.

(a) An athlete agent, with the intent to influence a student athlete or, if the athlete is a minor, a parent or guardian of the athlete to enter into an agency contract, may not take any of the following actions or encourage any other individual to take or assist any other individual in taking any of the following actions on behalf of the agent:

(1) Give materially false or misleading information or make a materially false promise or ~~representation;~~ representation.

(2) Furnish anything of value to the athlete before the athlete enters into the ~~contract; or~~ contract.

(3) Furnish anything of value to an individual other than the athlete or another registered athlete agent.

(b) An athlete agent may not intentionally do any of the following or encourage any other individual to do any of the following on behalf of the agent:

(1) Initiate contact, directly or indirectly, with a student athlete or, if the athlete is a minor, a parent or guardian of the athlete, to recruit or solicit the athlete, parent, or guardian to enter an agency contract unless registered under this ~~act~~; Article.

(2) Fail to create or retain or to permit inspection of the records required by ~~Section 13~~; G.S. 78C-123.

(3) Fail to register when required by ~~Section 4~~; G.S. 78C-114.

(4) Provide materially false or misleading information in an application for registration or renewal of ~~registration~~; registration.

(5) Predate or postdate an agency ~~contract~~; or contract.

(6) Fail to notify a student athlete or, if the athlete is a minor, a parent or guardian of the athlete, before the athlete, parent, or guardian signs an agency contract for a particular sport that the signing may make the athlete ineligible to participate as a student athlete in that sport.

Staff Note: § 78C-124 is comparable to G.S. 78C-98 in describing the conduct which gives rise to criminal penalties and civil liabilities. However, § 78C-124 adds language to reflect the rare circumstance of when an agency contract involves a student athlete who is a minor. § 78C-124 also prohibits an athlete agent from encouraging any other individual to take or assist another individual in taking any of the prohibited conduct on behalf of the agent.

"§ 78C-125. Criminal penalty.

An athlete agent who violates ~~Section 14~~ G.S. 78C-124 is guilty of a [misdemeanor]

[felony] and, on conviction, is punishable by [].

***Staff Note:** § 78C-125, like G.S. 78C-99, establishes the criminal penalty which may be imposed for prohibited conduct. However, G.S. 78C-99 reads: "An athlete agent who violates any provision under G.S. 78C-98(a) is guilty of a Class I felony." G.S. 78C-99 imposes the criminal penalty only for conduct prohibited by subsection (a) of the section.*

At its June 3, 2016, meeting, the General Statutes Commission deferred consideration of § 78C-125 in order to obtain input from the Department of the Secretary of State and others.

***Uniform Law Commission Legislative Note:** Each state should determine the penalties to be imposed for a violation of the act. A state may wish to include a suspension or revocation of the registration as a part of the penalty and also may wish to dedicate all or a part of any fine to the enforcement of the act (see, for example, Section 18897.93, California Business and Professions Code).*

"§ 78C-126. Civil remedy.

(a) An educational institution or student athlete may bring an action for damages against an athlete agent if the institution or athlete is adversely affected by an act or omission of the agent in violation of this Article. An educational institution or student athlete is adversely affected by an act or omission of the agent only if, because of the act or omission, the institution or an individual who was a student athlete at the time of the act or omission and enrolled in the institution:

(1) Is suspended or disqualified from participation in an interscholastic or intercollegiate [sports] event by or under the rules of a state or national federation or association that promotes or regulates interscholastic or intercollegiate sports; or

(2) Suffers financial damage.

(b) A plaintiff that prevails in an action under this section may recover [actual damages] [treble damages] [,] [punitive damages,] [and] costs[, and reasonable attorney's fees].

An athlete agent found liable under this section forfeits any right of payment for anything of

benefit or value provided to the student athlete and shall refund any consideration paid to the agent by or on behalf of the athlete.

[(c) A violation of this Article is an [unfair trade or deceptive practice] for purposes of [insert reference to state's unfair trade practices law].]

Staff Note: § 78C-126 differs from G.S. 78C-100 in establishing a civil remedy for engaging in prohibited conduct. Under G.S. 78C-100, an educational institution has a right of action against an athlete agent or a former student athlete for damages caused by prohibited conduct. § 78C-126 removes the cause of action against a former student athlete and gives a student athlete a cause of action against the athlete agent. The bracketed § 78C-126(c) has no counterpart in G.S. 78C-100.

At its June 3, 2016, meeting, the General Statutes Commission deferred consideration of § 78C-126 in order to obtain input from the Department of the Secretary of State and others.

Uniform Law Commission Legislative Note: If a state has a law that prohibits unfair or deceptive trade practices and provides for civil enforcement by a state agency or persons, including competitors, injured by the practice, the appropriate name for the practice and statutory citation to the applicable law should replace the bracketed language. The drafting rules in some states prohibit what is an amendment by reference and may require the unfair or deceptive trade practices act be amended. In that case, the bill should contain an appropriate amendment of the specific law and subsection (c) should be deleted. Similarly, if a state does not have an unfair or deceptive trade practices law, subsection (c) should be deleted or substantially expanded to provide for civil enforcement by a state agency, affected members of the public, and competitors.

"§ 78C-127. Civil penalty.

The [Secretary of State] [Commission] may assess a civil penalty against an athlete agent not to exceed \$[50,000] for a violation of this Article.

Staff Note: § 78C-127 is comparable to G.S. 78C-101 in authorizing the enforcement agency to assess a civil penalty against an athlete agent for engaging in prohibited conduct. G.S. 78C-101 provides that the Secretary of State may assess a civil penalty against an athlete agent not to exceed \$25,000 for a violation of the Article. § 78C-127 suggests the bracketed amount of \$50,000.

At its June 3, 2016, meeting, the General Statutes Commission decided to recommend the continuation of the state registration system. Also, the Commission flagged § 78C-127 for further consideration and input.

~~["§ 78C-128. Interstate Compact for Registration of Athlete Agents.~~

~~(a) In enacting this Article, this State adopts the Interstate Compact for Registration of Athlete Agents and agrees to participate with other states enacting those provisions in maintaining the Commission on Interstate Registration of Athlete Agents.~~

~~(b) Once effective, the compact continues in force and, except as otherwise provided in subsection (c) of this section, remains binding on each member state.~~

~~(c) A member state may withdraw from the compact by repealing the portions of the statute that enacted the compact into law. The withdrawal may not take effect until one year after the effective date of the statute that repeals the portions of the statute that enacted the compact into law and until written notice of the withdrawal has been given by the Governor and Secretary of State of the withdrawing state to the Governor and Secretary of State of each member state.~~

~~(d) A member state immediately shall notify the executive director of the Commission in a record of the introduction of legislation to repeal the compact in the member state. Not later than 60 days after receipt of the notice, the executive director shall notify other member states of the introduction of the legislation.~~

~~(e) A state withdrawing from the compact under subsection (c) of this section is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including obligations the performance of which extend beyond the effective date of withdrawal.~~

~~(f) The compact is dissolved effective on the date of the withdrawal of the member state that reduces the membership in the compact to fewer than five states. On dissolution, the compact has no further effect, and the affairs of the Commission must be concluded and assets~~

~~distributed in accordance with the Commission's bylaws.]~~

Staff Note: Bracketed § 78C-128 is the part of Alternative B which formally creates the Interstate Compact on Registration of Athlete Agents and provides the procedure for a state that has entered into the Compact to withdraw from the Compact. The section allows a state to adopt the Compact and to agree to participate with other states adopting the Compact in maintaining the Commission on Interstate Registration of Athlete Agents. The section also provides the procedure for a state that has entered into the Compact to withdraw from the Compact, that is, by repealing the provisions that enacted the Compact into law. The withdrawal does not take effect until one year after the effective date of the repeal and until written notice of the withdrawal has been given by the governor and secretary of state of the withdrawing state to the governor and secretary of state of each member state.

At its June 3, 2016, meeting, the General Statutes Commission decided to recommend the continuation of the state registration system.

"§ 78C-129. Uniformity of application and construction.

In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Staff Note: § 78C-129 is comparable to G.S. 78C-102 and is a standard provision in uniform acts.

"§ 78C-130. Relation to Electronic Signatures in Global and National Commerce Act.

This Article modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103 (b) of that act, 15 U.S.C. Section 7003(b).

Staff Note: § 78C-130 is comparable to G.S. 78C-103 and is a standard provision in uniform acts that responds to specific language of the Electronic Signatures in Global and National Commerce Act and is designed to avoid preemption of State law under that federal statute.

~~[SECTION 21. SEVERABILITY. If any provision of this [act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [act] which can be given effect without the invalid provision or application, and to this end the provisions of this [act] are severable.]~~

Staff Note: This severability provision is set out as an uncodified provision in Section 3 of this draft.

Uniform Law Commission Legislative Note: Include this section only if this state lacks a general severability statute or a decision by the highest court of this state stating a general rule of severability.

SECTION 3. If any provision of this act or its application to any person or circumstance

is held invalid, the invalidity does not affect other provisions or applications of this act which

can be given effect without the invalid provision or application, and to this end the provisions of

this act are severable.

Staff Note: Section 3, like G.S. 78C-104, is a standard severability provision.

SECTION 4. The Revisor of Statutes shall cause to be printed, as annotations to the

published General Statutes, all relevant portions of the Official Comments to the Revised

Uniform Athlete Agents Act (2015) and all explanatory comments of the drafters of this act as

the Revisor may deem appropriate.

Staff Note: Section 4 authorizes the printing of official comments and drafters comments.

SECTION 5. This act becomes effective [_____].